

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

JOSHUA CANALE et. al.,

Plaintiffs,

v.

Civil No. 1:05-CV-412

(GLS) (DRH)

MANCO POWER SPORTS, LLC, et. al.

Defendants.

APPEARANCES:

OF COUNSEL:

FOR PLAINTIFF:

**JOHN E. DURST, JR.
C/O Jaghab, Jaghab & Jaghab, P.C.
176 Mineola Blvd.
Mineola, New York 11501**

FOR DEFENDANTS:

No Appearance

**Gary L. Sharpe
U.S. District Judge**

Order

On April 4, 2005, John E. Durst, Jr., Esq. filed a complaint on behalf of the plaintiffs in this action, thus appearing on their behalf. See L. R. 83.2(a). On May 27, 2005, the Honorable Frederick J. Scullin, Jr., Chief

United States District Court Judge issued an order removing Mr. Durst from the rolls of those attorneys authorized to practice in the Northern District of New York. Judge Scullin's order granted Mr. Durst permission to "reapply for admission to the Bar of this Court consistent with Local Rules of Practice 83.1." Judge Scullin's order effectively operates as a withdrawal of Mr. Durst as plaintiffs' counsel. See L.R. 83.2(b).

On June 8, 2005, and July 20, 2006, the court issued an order requiring Durst to, *inter alia*, serve a copy of the order on his clients, Joshua Canale and Patricia Othmer, who were then required to retain and identify substitute counsel within sixty days. Durst was ordered to file a certificate of service verifying service of the order on his clients. He has never complied. Furthermore, the court has no means to identify a current address to by-pass Durst and serve the clients directly. Consequently, this action has now remained dormant on the court's docket since April 4, 2005, with no indication that process was ever served or issue otherwise joined. Accordingly, plaintiffs have failed to prosecute their action according to Rule 41 of the Federal and Local Rules.

For the reasons stated, it is hereby

ORDERED that Civil Action 1:05-CV-412 is **HEREBY DISMISSED**

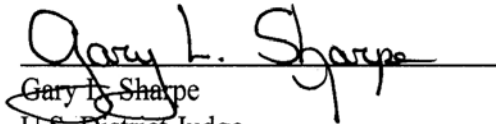
for failure to prosecute; and it is further

ORDERED that the Clerk of Court transmit a copy of this order and the June 8, 2005, order (Dkt. No. 3) to the attorney discipline files maintained in the Syracuse Clerk's Office to be retained should John E. Durst, Jr. seek readmission to the role of attorneys authorized to practice law in the Northern District of New York; and it is further

ORDERED that the Clerk of Court mail a copy of this order to John E. Durst, Jr. at the address referenced in the caption.

SO ORDERED.

Date: August 15, 2006
Albany, New York


Gary L. Sharpe
U.S. District Judge